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EDUCATION LABOR HANDBOOK:

A GUIDE TO COLLECTIVE BARGAINING
REFORM IN COLORADO

CONFIDENTIAL

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Table of Contents

- Preface 2
- Introduction: Colorado’s Education Labor Landscape 2
- NEA and AFT: The Unions 3
 - Overview 3
 - Organizational Structure 3
 - Membership Costs and Benefits 4
 - Local-Only Union Option 4
 - Member Political Refunds 4
 - Colorado Union Politics in Action 5
 - Union Electioneering Wins in Colorado Court 5
 - National Politics: Activities and Challenges 6
- Collective Bargaining Reform: Policies and Options 6
- School Boards Versus Unions: In the Trenches 9
 - From South Park to Las Animas: Smaller Fronts 9
 - Early Struggles for Open Negotiations 10
 - Douglas County’s 2012 War for Independence 11
 - Jeffco Enters the Fray 12
 - Tumult in Thompson 13
 - What about Teacher Strikes? 14
- Lessons From Union Tactics 14
 - Negotiation Timelines Matter 14
 - Clear Communication and a Strong Negotiating Team are Critical . . . 15
 - Carefully Navigate Issue Restrictions and “Good Faith” Requirements 16
 - Prepare for Large-Scale Rallies and Pressure Pushes 17
 - Union Leaders Can Refrain from Being the Opposition’s Face 18
 - Union Allies Fire up the Base with Social Media: Jeffco and #StandUp4Kids 19
 - CEA Isn’t Afraid to Play the Lawsuit Game 19
 - Blurring the Electoral Lines: An Emerging Strategy 20
- Conclusion: Choosing the Right Message and Approach 20
- Endnotes 21

Preface

In recent years, Colorado experienced a significant number of serious showdowns between local school board reformers and entrenched union power. These experiences have shown that simply having the right policy goals and ideas is not enough to ensure initial or sustainable success. Examples in Douglas County, Jefferson County, Adams 12, Thompson, and other districts highlight the type of strategies and tactics unions have used as attempts to disrupt positive changes and to attack the agents of those changes.

From these examples and other expert sources, reformers need to understand how labor organizations likely will counter future reform efforts. A concerted local reform strategy again may be pursued, and future

reformers cannot afford to repeat the mistakes of their predecessors, nor be taken unawares by predictable union actions. As the proverb says, “Forewarned is forearmed.” The lessons of past challenges—both successes and failures—can help inform the vision of local-level education reform and inspire more effective action in years to come.

This playbook is dedicated to the service of Colorado’s truly bold conservative school board reformers. They demonstrated what policy victories are possible, and have taught us both the high aspirations and frustrating approach of trying to effect significant change at the district level.

Introduction: Colorado’s Education Labor Landscape

Colorado law places no obligation on school boards to give special union status to employee labor organizations. Unions win recognition and privilege at the district level, a status that typically becomes entrenched over time. The inertia of time and union influence in closed-door negotiations tends to promote policies that can harm students by protecting ineffective teachers and solidifying the union’s ability to promote its political agenda under the assumed moral authority of representing educators.

Though Colorado is not a right-to-work state, the law grants teachers the freedom from being forced to join or underwrite union membership.¹ At the local level, many negotiated agreements weaken that right by making it difficult for teachers to withdraw membership or even forcing non-members to repeatedly express their intent to opt out in order to avoid paying union tribute fees.

An **association** is any membership organization of teachers or other education employees within the context of a local school district. A **union** is

an association that has been recognized by the local board of education as the exclusive collective bargaining agent for all teachers or other specific body of employees in a district, according to the terms of a binding contract. A contract may be referred to as a **collective bargaining agreement, master agreement, or memorandum of understanding**. Of Colorado’s 178 school districts, 39 have one or more active collective bargaining agreements. A larger number of districts have informal, non-binding **meet and confer** agreements or negotiation policies that give school boards somewhat greater latitude over personnel policies and association recognition.

NEA and AFT: The Unions

Overview

Over the past decade, the teachers unions have lost credibility when it comes to providing a viable intellectual counterpoint to policies that promote school choice and accountability. In 2009, education researcher Dr. Jay P. Greene made the astute comparison of the National Education Association (NEA) and American Federation of Teachers (AFT) to the decline of the powerful tobacco industry, which for years continued to fight on with phony arguments against the repeatedly demonstrated serious health risks associated with smoking. Even as its credibility waned, Big Tobacco remained a formidable force due to its powerful, well-heeled lobby. Likewise, the NEA and AFT continue to exercise a measure of political brute strength behind an unpopular veil of diminished credibility.²

Not surprisingly, teachers' views of the unions are significantly more favorable than those of American voters. In *Education Next's* 2015 national survey, 57 percent of teachers agreed that unions "have a generally positive effect on schools," while 26 percent took the opposite view (only 46 percent of the teachers surveyed identified themselves as union members). Among the overall population, 30 percent gave unions a favorable nod, while 40 percent said they "have a generally negative effect."³ Results clearly would vary within different states and communities.

The challenge comes in identifying the unions' multiple independent and overlapping layers. Though little or no empirical data exists to frame the question, common sense suggests that teachers unions are viewed more favorably at the local level, as that is where they are more directly connected to the individual classroom teachers with which parents and community members have relationships. The more distant and detached the levers of labor power, the less favorable, more political, and more intrusive the entity is likely to be seen. Since the different levels of the unions are directly attached and mutually dependent, organized labor resistance to serious threats of local education reform require active coordination. But union leaders are more intent on some parts of the union structure being visible than others.

Organizational Structure

The most recent available reports to the U.S. Department of Labor show that the National Education Association brought in more than \$388 million in revenues during the 2014-15 fiscal year.⁴ Of that amount, roughly \$363 million—more than 93 percent—came through the collection of member dues and fees. NEA's current receipts represent a significant increase from the amount the organization collected 14 years earlier, with nearly all of that increase accounted for by higher dues rates.

When factoring out members from state affiliate mergers with AFT, NEA's current 2.9 million membership represents a 0.2 percent increase from 1999-2000. As Education Intelligence Agency's Mike Antonucci explains, "In the last 15 years, America's public education system hired an additional 276,000 teachers and almost as many education support employees. From a pool of perhaps a half-million possible members, NEA added no more than 5,000."⁵

In more recent years, the NEA's membership has been on the decline in most states. Colorado is no exception. Both the NEA and the AFT have a presence in Colorado, though the NEA's footprint is much larger. In 2009-10, 37,000 education employees were on the active rolls of the Colorado Education Association (CEA). Within four years, more than 10 percent of the membership had been shed—down to 33,200.⁶ Over the same four-year span, the number of public school teachers in Colorado increased by 6.4 percent (50,648 to 53,910).⁷

The CEA website lists 209 different local associations, nearly 80 percent of which represent licensed teachers in individual school districts. Nearly 30 of these associations cover various groups of school district classified employees, with smaller numbers representing retired employees or college faculty.⁸ All local associations are divided geographically into one of Colorado's 19 UniServ (short for Unified Services) units. The two or more directors operating at each unit provide localized institutional knowledge and direct support in collective bargaining negotiations, membership activism, and union agenda advocacy.⁹

CEA is governed by a Board of Directors that includes three officers elected at the annual Delegate Assembly, two NEA directors, and a representative from each of the Uniserv units. The union headquarters' day-to-day operations are overseen by a well-paid executive director. Based on general accounts, most union members are not diehard activists. A significant minority are motivated by ideology or by a desire to rise through the ranks as building representatives and local union presidents to get the high-paying, high-prestige union executive jobs outside the classroom. Relatively few will reach the upper echelons, but the motivation to ascend helps breed a new generation of warriors in defense of the larger organizational agenda.

Membership Costs and Benefits

The NEA's "Unified Dues Structure" requires that members who join a local union also join and fund every level of the union. Once a teacher signs a "Membership Form & Salary Deduction Authorization," her status as a member is presumed to continue until an affirmative revocation is made. Each level sets the respective dues rate. For 2015-16, the annual full-time member rates are \$185 for NEA and \$380 for CEA. Local and Uniserv rates vary, though the typical amount of annual dues collected from a full-time teacher to support all levels of the union is roughly \$800.

Advertised NEA benefits include legal coverage against potential job actions, liability insurance, publications, and group-related discounts. Less tangible pressures tend to bring more members into the fold in certain districts or school buildings. Some districts grant the union as exclusive bargaining agent special access to meet and give presentations to new teachers at orientation and induction sessions. Some particularly persistent and motivated building representatives can enhance their status by persuading most or all of their colleagues to join. And many educators do not like to feel excluded by the peer pressure of the teachers' lounge environment.

Local-Only Union Option

It is important to remember that the teachers unions are not monoliths. The "Unified Dues Structure" presents a powerful binding force, but other dynamics also are at work. One example is the interests of more

senior teachers versus their newer counterparts. Union leadership tends to represent better the desires of the former, those who are seeking to protect pension security and their ability to retire at the ideal time to cash in the most money. Generationally, younger teachers tend to be less trusting of the union as an institution. However, this difference has not yet presented itself as a crippling blow to the clout of the NEA and AFT.

Another potentially vulnerable point of division comes between the local and state union affiliates. In other states, a number of local unions—usually smaller chapters—have successfully broken free, continuing to bargain for their own members without charging more dues to ship to the state and national offices.¹⁰ Higher-up union officials seldom welcome the news passively, but in cases like Wicomico County, Maryland, they demonstrate that extraordinary measures can be taken. An ongoing legal dispute that started there in 2014 alleges that officials from the Maryland State Education Association came in and took over the local union office—including changing locks, canceling credit cards, and blocking email accounts—immediately before Wicomico teachers were to vote on possible secession.¹¹

No serious efforts to establish a local-only union have occurred in Colorado. One actual instance in 2014-15 points to the inherent dangers.¹² A local CEA affiliate president dissatisfied with the agenda and priorities of the statewide union privately expressed his dissatisfaction, confidently declaring support from a majority of local members. Rather than move forward with a local vote or other action, the local president took the case directly to state union leaders. The local president shortly thereafter was ousted from office and replaced with a hardline CEA loyalist.

Member Political Refunds

Through the one-time salary deduction authorization, teachers and other education employees can sign up at any time to become a member of the Colorado Education Association (CEA)—usually through the local affiliate, though in some cases directly with the state organization. In many districts, however, individual members can only opt out of membership during a narrow window of time, in many cases only by coming into the union office to make the request.

The timelines and procedures are determined locally through collective bargaining processes.

The CEA raises funds for direct political action through a structure known as Every Member Option (EMO).¹³ A certain amount (\$41 in 2015-16) is deducted from the paycheck of every full-time member teacher. Part-time member teachers and support personnel pay a lesser amount. The EMO exclusively finances political activities, particularly state and local campaign activities. It does not cover expenditures on lobbying or other independent political advocacy. CEA members who wish to receive an EMO refund must submit their requests in writing each year by a December 15 deadline.

Some local CEA affiliates also have their own separate refundable EMO. In some districts, a CEA member teacher has as much as \$65 taken from his or her paycheck to directly fund political campaigns – \$41 to CEA and \$24 to the local.

Colorado Union Politics in Action

Though transparent accounting is lacking, the EMO dollars collected by CEA and several of its local affiliates primarily are directed into small donor committees (SDCs). Under state campaign finance law, these committees are authorized to contribute 10 times more to candidates than individuals or other types of committees. SDCs are limited to raising no more than \$50 per person per calendar year.¹⁴ The “voluntary” fiction of the EMO scheme enables these government labor organizations to collect and transfer campaign funds from a broad base of members under the umbrella of “non-itemized contributions.” By all appearances, union leaders place all the collected EMO funds into a general pot. Then they transfer large amounts from the pot into an SDC as if thousands of members individually made small donations.

In Colorado, education unions’ record of partisan giving is notoriously one-sided, including direct contributions to candidates, party organizations, and outside direct advocacy groups. The combined record of CEA and AFT is heavily tipped toward the Democratic side of the aisle over the past five election cycles, at a ratio of more than 100 to 1. Between 2006 and 2014, these unions have reported donating nearly

\$5 million to Democratic candidates and causes, and less than \$40,000 to Republican candidates and groups.¹⁵

The record of union political campaign contributions is no accident. The CEA served as one of the founding members of the Colorado Democracy Alliance—“an active collaboration of donors and progressive organizations aligned to build and fund a permanent progressive infrastructure.”¹⁶ The CEA headquarters at Colfax and Grant, within sight of the Colorado State Capitol, was the central gathering place for the earliest meetings of the billionaire “Gang of Four” and their ideological allies in 2004.¹⁷

The Democratic Party took control of both houses of the state legislature in 2004, with indispensable aid from CEA in several key races. Several of those races took place in the swing territory of Jefferson County, covering Denver’s western suburbs. The CEA’s largest and most powerful local affiliate, the Jefferson County Education Association (JCEA), organized “Great Pumpkin” rallies mobilizing union members to canvass targeted voter lists with Democratic candidate literature.

JCEA overreached with its volunteer incentive plan. Tipped off by a disgruntled teacher’s spouse, the Independence Institute’s Pam Benigno uncovered a union scheme that promised Adams State College graduate credit to teachers who perform a few hours of shoe leather work on behalf of union-favored candidates. The chair of the Adams State Board of Trustees confirmed that JCEA had made the request, but the college never agreed to sanction the deal.¹⁸

Union Electioneering Wins in Colorado Court

Also in 2004, a landmark Colorado court case ultimately vindicated union leaders’ increasingly sophisticated and coordinated role in state elections. One key 2004 race for control of the legislature, Democrat Bob Bacon’s victory in northern Colorado’s Senate District 14, made the headlines. Fort Collins parent Wayne Rutt uncovered a stack of internal union documents outside the Poudre Education Association (PEA)’s dumpster that raised a host of concerns about illicit electioneering activities. He and co-plaintiff Paul Marrick filed a formal complaint

against PEA and CEA, alleging they had committed campaign finance violations “by coordinating its electioneering activities with the Bob Bacon campaign, compensating its volunteers for their efforts on behalf of the Bacon campaign, illegally causing public facilities and resources to be used for partisan politics, and illegally engaging in express advocacy supporting the election of Bacon.”¹⁹

Reams of submitted evidence showed union officials communicated regularly about campaign strategy with then-candidate Bacon. Paid by general CEA member dues, the same officials transported candidate literature from union headquarters and mobilized member volunteers to work on Bacon’s behalf. Union-recruited volunteers were thanked by the soon-to-be state senator at a PEA-sponsored event. Union leaders instructed volunteers not only to deliver thousands of Bob Bacon for Senate fliers but also to obtain information on voters’ interests, or to leave forged personal messages from the candidate. Local union leaders in Poudre and in other districts furthermore were caught using district email systems to recruit campaign volunteers.²⁰

Rutt and Marrick’s victorious appeals court ruling was overturned by the Colorado Supreme Court in May 2008 on a 5-2 vote. A majority of justices bypassed the issue of coordination, in which the Bacon campaign saved money by essentially outsourcing key campaign functions as part of an undisclosed deal. Instead, the court narrowly defined “communication” to include only messages transmitted within the ranks of union membership, rejecting all external advocacy as potential violations of the intent of the state’s campaign finance laws. As noted at the time, “This determination makes as much sense as saying that phone calls and emails about producing a political television or radio ad are ‘communication,’ but not

the actual commercial.”²¹ The legal outcome ensured Colorado teachers unions’ continued integral stealthy role in partisan political races.

National Politics: Activities and Challenges

CEA’s coordinated efforts merely follow the designs of the national teachers unions, which represent an influential and integral branch of the political Left. Every year, the NEA and AFT report siphoning millions of dollars collected from members to support various third-party advocacy groups for the Democratic Party and various progressive causes, many of which are at best tangentially related to the issue of public education. The national union also stands at the ready to aid in state-level efforts to “defeat anti-public education ballot issues and help members in other states fight the attacks on public sector employees and unions.”²² For example, the NEA contributed \$1 million to the Amendment 66 campaign, Colorado’s failed 2013 billion-dollar statewide education tax initiative.²³

National teachers unions remain a formidable political force, even though their recent track record in high-level campaigns has been less than stellar. *Education Week* estimated more than \$60 million in combined 2014 political campaign spending from the NEA and AFT.²⁴ Yet nearly all of the Democratic candidates they supported in key gubernatorial and U.S. Senate races were defeated. The education unions’ 2014 success rate marked a huge drop-off from 2012. Still, the NEA Advocacy Fund’s combined record of backing winning candidates in the last two election cycles was the lowest of the nation’s 10 largest SuperPACs.²⁵

Collective Bargaining Reform: Policies and Options

Reform-minded school board leadership focuses on ways to improve results for students, to empower parents as respected partners in the educational process, and to deliver effective learning in a fiscally

responsible and accountable manner. Challenging the power and prerogatives of unions and rethinking the traditional labor organization model represent one key leg of the reform stool. Specific policy objectives

and messages will vary according to the landscape of different districts, but key examples of common local labor reforms that can be pursued are explored below. Each item includes not only a thumbnail description of the reform, but also the predicted response from union opposition, based on prior experiences.

1. Compensation Reform: School districts still predominately pay teachers according to a standard schedule based solely on seniority and academic credentials, though the numbers offering alternative compensation plans has grown in recent years. Reform-minded school boards in many districts have opportunities to craft or improve systems that reward teachers and other district employees based on demonstrated effectiveness.

Potential Opposition: Union leaders and allies are not likely to directly attack pay for performance, a concept that resonates with a majority of the public. In some circles they may attack strategic compensation reforms as divisive and creating hostile work environments, but generally they will complain about process. The Colorado Education Association (CEA) officially states that plans deviating from the traditional pay scale “must be developed in collaboration with the local association; be subject to collective bargaining; be research-based; and enhance the single salary schedule with attainable goals that will result in significantly increased compensation and at least the same career earnings potential of the salary schedule.”²⁶

2. Stop Using Seniority to Place Teachers:

In 2010 Colorado adopted Senate Bill 191, a landmark law that strengthened teacher and principal evaluations and linked tenure decisions to measurable effectiveness. Nonetheless, a number of local bargaining agreements continue granting seniority preference in internal hiring, transfer, and staff reduction decisions.²⁷ In 2015, mandatory open negotiations under Proposition 104, which passed with overwhelming support in 2014 after an Independence Institute-led educational campaign, enabled Jefferson County to reach agreement on a new, streamlined master union agreement that replaced seniority with effectiveness as a core tenet.

Potential Opposition: Union leaders have a difficult time articulating a defense of seniority provisions to

a broader community audience. The advent of open bargaining meetings under Proposition 104 opens the door for reform board-aligned negotiators to make a bolstered case for changing the outdated provisions in the interest of raising student achievement.

3. Bring Accountability to Union Release

Days: Most bargaining districts and a few non-bargaining districts grant unions annual allotments of leave days to conduct union business. In some cases, tax dollars underwrite both the released employee and the substitute teacher.²⁸ Anecdotes suggest that release time often is used for professional development, grievance, collective bargaining negotiations, internal membership drives, legislative lobbying, or political activities. Reform-minded school boards may seek to eliminate release days, require full substitute cost reimbursement, or impose reporting requirements to ensure release days benefit the general education program.

4. Make Unions Pay for Their Officers’

Services: A smaller number of bargaining districts grant full or extended release to the local union president, with only a few requiring the union to cover the full cost of salary and benefits of the released employee. The net taxpayer subsidy to the union may exceed the cost to employ one or more new teachers. The simple solution is to stop the release time, or at least stop underwriting it with tax dollars.

Potential Opposition: When confronted with the issue of paid release days and officers, union leaders choose to highlight examples either of joint district educational projects or representation of individual employee grievances. The best response from the bargaining table is to ensure all release days are properly reported and documented, or to stop public funding. When given this option before the school district eliminated its collective bargaining agreement in 2012, the Douglas County Federation of Teachers chose to give up release days.

5. End Union Payroll Dues Deduction

Services: The privilege of government payroll deduction of association member dues is not limited to districts with exclusive union relationships. School boards without bargaining agreements could terminate the practice of dues collection through a standard

policy change. Whether achieved through a change in board policy or master agreement, the rationale for the move is that it levels the playing field. Interest groups that support school board and other candidates should not have the privilege of having their campaign, lobbying, and negotiating funds collected by the government whose officials they influence.

Potential Opposition: In 2012, Douglas County union negotiators drew a line in the sand on this issue, going as far as to claim the change would violate their First Amendment rights and weakly threatening to sue. A standard fallback is to claim removing the automatic payroll deduction undermines member teacher convenience. Members are free and able to pay dues directly to the association through a variety of means, including private electronic banking transfers. In fact, beginning in 2014, union leaders preemptively worked to persuade Jefferson County members to switch to EFT dues payments when they feared a repeat of Dougco.

6. Allow Union Members to Opt Out at Any Time: Most bargaining districts place direct limitations on when union member teachers can terminate their automatic monthly dues deductions. Most provide a 15-day or 30-day period in the fall in which union members can opt out, though some provide summer or winter revocation windows. Only when a district continues to play a role in collecting and transferring dues money can local reformers enforce policies giving individual teachers more latitude with membership decisions.

Potential Opposition: On two occasions in recent years, legislation was introduced to allow teachers to opt out of union membership at any time with 30 days' notice. The primary argument used to reject both bills was that they would usurp "local control."²⁹ That objection doesn't apply at the school board level. When pressed harder for an answer, apologists will admit that giving teachers such freedom would pose an administrative inconvenience for the union office.

7. Eliminate "Dues Equivalency" Fee Burdens: A handful of Colorado school districts actually obligate non-union members to opt out in order to avoid paying a full year's worth of unwanted dues. The practice of "dues equivalency" currently

affects employees in seven districts, including teachers in five districts. Non-union member teachers in Pueblo 60, Pueblo 70, Alamosa, and Antonito must provide formal notice early each school year, while their counterparts in Colorado Springs 11 only need to file a letter one time. A concerted effort by reform-backed negotiators in a transparent bargaining environment holds strong potential of rolling back these unfair policies. After all, 50 percent of teachers expressed opposition to union bargaining fees in a recent national survey.³⁰

Potential Opposition: On a few different occasions, the Independence Institute has utilized targeted advertising of dues equivalency deadlines to Pueblo education employees—including a billboard and earned media campaign in 2014. The public response from union leaders typically revolves around two themes: 1) Defend the long-time practice as working for union leaders just fine; and 2) Attack the messenger. They may seek to make the case that all employees benefit from their services, but will not concede that their organization insists on being the monopoly service provider.

8. Provide Equal Access to District Systems: Nearly all of Colorado's existing certified education employee bargaining agreements grant union agents exclusive access to school district property, events, or information that is denied to other union or non-union membership groups. Common provisions include specified union authorization to contact teachers through workplace mailboxes, bulletin boards and district email systems; or special privileges to use district facilities for meetings at no cost. If enforced, such policies have the practical effect of keeping teachers from being able to access fair information about non-union membership alternatives, such as the Professional Association of Colorado Educators (PACE). PACE is a state affiliate of the Association of American Educators (AAE).

Potential Opposition: Policy or negotiation proposals that adopt a neutral stance toward the use of district resources are not likely to elicit direct rebuttals, especially under the light of open negotiations. Union leaders that feel they may have more leverage could try to redirect the issue to raise the costs for all groups

to use facilities in hopes of pricing some competitors out of the market.

9. End Exclusive Representation: To propose the local union surrender its status as exclusive representative means that a teacher or other individual employee has a choice concerning who represents them in the case of a grievance. (Exclusive representation is to be understood distinctly from exclusive bargaining status, which entitles a local association to negotiate contractual policies with the Board of Education.) This change—which was one of the improvements in the 2015 Jeffco model contract—is fairly easy to message, especially through the sunshine of open negotiations.

Potential Opposition: The only somewhat credible opposing argument that can be offered is ending exclusive representation signifies a solution in search of a problem. It is more likely that teachers who face a grievance situation do not know what benefit might be gained from competition for these services, and therefore may not be inclined to complain vocally about the services they are receiving. This opposition argument does not trump the need for basic fairness.

10. Pension Cost Sharing: Under a 2010 state law, taxpayers, through government employers, bear a steadily increasing burden of the cost for pension contributions. But the law also empowers local boards to boost the share contributed by employees. Adams 12 undertook this measure in 2012 to balance a tight budget, and created a firestorm of retaliation that the reform board eventually weathered.

Potential Opposition: This approach may be eminently reasonable as a way to save money more fairly in tough budget times. However, in a collective

bargaining environment it also is highly likely to touch off heated opposition and expend political capital that could be used on broader reform measures. Union leaders can easily mobilize the interested base and cast negative attention on the Board. Extra fortitude may be required.

The Other Option: Ending a Collective Bargaining Agreement

Most Colorado school boards exercise their latitude not to participate in formal bargaining relations with an exclusive union bargaining agent. A number of the remaining districts participate in semi-formal, non-binding “meet and confer” negotiations with association representatives. A board of education retains the greatest authority by refraining from collective bargaining, or even by going further and ending any recognition of negotiation privileges.

But this approach ought not limit opportunities for teachers to have their professional voices heard in the decision-making process. Wise district leadership will incorporate the input of classroom instructors in formulating policies and programs that can better serve families and improve academic results. The best education systems honor and promote meaningful partnerships between empowered parents and educators. To the extent union power presents a genuine obstacle to promoting fiscal responsibility, parental choice, teacher professionalism, and increased student achievement, then challenging union exclusive bargaining status should stay on the table. But simply decertifying a local union for its own sake can be a frustrating and politically counterproductive strategy.

School Boards Versus Unions: In the Trenches

From South Park to Las Animas: Smaller Fronts

In this decade alone, Colorado has witnessed an exceptional number of local school district showdowns between organized labor and officials seeking to

challenge their power. Between 2010 and 2013, four smaller Colorado school districts had little publicized but noteworthy confrontations with teachers unions. The first occurred in Weld County, in the 2,400-student **Valley School District Re-1**.

Looking to save funds in a difficult 2010 budget environment, the board removed formal policy recognition of the local Valley Education Association (VEA) to participate in a non-binding meet and confer process to determine compensation. VEA filed suit in district court, claiming the district had unilaterally cancelled a true collective bargaining agreement. The school district prevailed in the preliminary injunction hearing. Before reaching formal trial, the two parties went through court-ordered mediation and reached settlement in July 2011. VEA agreed to forfeit any official recognition of its negotiating privileges in board policy, but resumed periodic informal meetings the superintendent had offered to them the year before.³¹

The even tinier **Park County Re-2**—which governs the area made famous by the irreverent cartoon *South Park*—first unionized in 2003, according to local accounts. But the South Park Education Association (SPEA) struggled to make its contractual power permanent. By 2009 the board increasingly saw the process as a “headache,” but passed on rejecting the collective bargaining agreement in deference to approaching voters with a pending bond election. The union responded by capturing four of seven board seats.

Board member Larry Falk was not deterred. The SPEA had attacked him before. He led the charge to repeal the union contract, lobbying his colleagues to join him. Falk was successful enough to win a 4-2 vote rejecting a renewal of the collective bargaining agreement at the May 12, 2011 meeting. A former teachers union president cast the deciding vote to cancel the exclusive bargaining status SPEA had enjoyed for nearly a decade. As of the agreement’s expiration on June 30, Park County Re-2 reverted to a non-union school district.³² Perhaps proving the volatility of Colorado’s free-wheeling landscape of local union relations, the SPEA signed a new collective bargaining contract with the board in 2013.

Sometimes the decision to end a formal bargaining relationship reflects a quiet, straightforward sort of pragmatism. **Las Animas School District** superintendent Elsie Goines said that in 2012 her Board of Education opted to “move away from a master agreement” in an effort to streamline costs

and use of personnel time. She said there “wasn’t a lot of debate” about the decision. The district, which employs about 40 teachers, since has embraced an informal and more efficient meet and confer process, and adopted a non-binding employee handbook that can be changed without an official ratification process.³³

In 2013, the **East Otero School District** in southeastern Colorado also decided to discontinue its collective bargaining agreement with the La Junta Education Association, a decision that received extremely little fanfare.

Early Struggles for Open Negotiations

The prelude to bigger local fights over Colorado teachers union power and privilege occurred over the issue of transparency. Open union negotiations, an issue researched and promoted by the Independence Institute, emerged in the tough budget times of 2011.

A group of parents filed suit against Colorado Springs District 11 for being denied access to observe union negotiations. A number of board members sympathetic to the modest reform pushed the conversation forward, but the Colorado Springs Education Association (CSEA) slammed the door shut. Notably, the local union president told the local *Gazette* that it was important to “protect the integrity of the collective bargaining agreement between teachers and safeguard the future of children by keeping the negotiations private.”³⁴ External legal pressure compelled the parties to revisit the issue and reach a compromise that opened certain bargaining sessions to limited public view.

Meanwhile, leaders of the Jeffco school district and teachers union were meeting behind closed doors to hammer out deals that resulted in pay freezes and furlough days. A reform-minded school board member in the minority was able to force a vote on the issue, though ultimately negotiations remained secret. Utilizing the media tools and connections of the Independence Institute, the issue’s profile was raised. In the process, it became clear that the union and its close allies were uncomfortable discussing the merits of the issue in public. In a guest *Denver Post* column, then-Jeffco school board president Dave Thomas invoked

the secretive deliberations of the 1787 Constitutional Convention to vindicate the policy of closed school district labor negotiations.³⁵

The combined stir from these two districts led in 2012 to state legislation requiring open negotiations, which passed one house before being dispatched on the basis of “local control.” One major district—Douglas County—immediately seized upon the opportunity.

Douglas County’s 2012 War for Independence

Elected in 2009 on a platform of introducing fiscal responsibility and expanding school choice, a slate of Douglas County school board reformers proceeded to advance an unprecedented ambitious agenda. Community input helped craft a Blueprint for Choice and a cutting-edge pay-for-performance system, supported by a new superintendent proud to wear the reform label.

As the ACLU and allies filed suit to halt the groundbreaking Choice Scholarship Program, which provided local vouchers for up to 500 Douglas County students to use at approved private schools, the American Federation of Teachers (AFT) and its local unions initially laid low. They participated in the School Choice and Performance Pay task forces, dragging their feet more than demonstrating outright hostility. Uncovered email communications from a senior political consultant to local union leaders advised on the day the ACLU took the case to court: “While this is welcomed news, I think we want to stay the heck out of the way on this lawsuit.”³⁶

Reformers swept the ballot box again in 2011, while the Douglas County Federation of Teachers (DCFT) played a half-hearted role in backing an unsuccessful local school tax measure. After the fallout of the election, the DCFT quickly became a vocal antagonist at school board meetings, declaring morale among district staff to be low and beginning to rally community support to its side.

If the strategy was designed to help preserve the union contract, up for full negotiation in 2012, then it backfired completely. A local parent group had collected more than 1,000 signatures to petition the school board for open union negotiations, but DCFT

leaders signed up to make public comment first, positioning themselves as champions of the bargaining transparency idea.³⁷ The Board gladly complied. An open negotiations page was set up on the district website, with document proposals and meeting information posted for public consumption. District staff videotaped the bargaining sessions.

Again staking its claim to an ambitious agenda, the board forwarded a negotiation proposal that effectively asked DCFT leaders to accept a fundamental weakening of their power while also promoting a healthy compensation increase and the addition of several new employee leave and insurance benefits. It didn’t take long for union negotiators to be backed into a corner, defending a few of their core privileges while abandoning others. As springtime pressed forward, they lost ground under the spotlight of public opinion.

Collective bargaining negotiations eventually stalled out. The union used summer break to secure a resolution of solidarity from the mothership union AFT, which declared that its “solidarity efforts will include supporting affiliates in the event of a strike or other actions our members choose, in processes authorized by their local union.”³⁸ The local union also filed a plea for intervention from the Colorado Commissioner of Labor, implicitly basing its claim on an empty strike threat. “An interruption of work by teachers would adversely affect the public interest, for those students, for their parents and families and for all citizens of Colorado,” attorney Joseph Goldhammer wrote in the June 18, 2012 letter.³⁹

While the request sat in bureaucratic limbo in Denver, alternative news sources highlighted Commissioner Ellen Golombek’s history as a lobbyist for the AFL-CIO, the larger union organization to which the DCFT belongs.⁴⁰ With the ball ultimately in his court, Gov. John Hickenlooper punted on the opportunity to intervene in Douglas County’s labor dispute. Instead, he and Lt. Gov. Joe Garcia weighed in with a mild *Denver Post* op-ed urging the two sides to maintain a “spirit of collaboration and cooperation.”⁴¹

Less than two weeks after the op-ed appeared, sending a signal of neutrality from state government, the Douglas County Board of Education formally

terminated the union contract that had lapsed on June 30. The Board also adopted Policy HB, governing “relationships with labor unions,” that prohibited payroll union deduction or any taxpayer financing of union activity. By design, the policy incorporates language that gives citizens the power to enforce “injunctive relief” in the courts if its terms are violated.⁴²

From a legal and political standpoint, Douglas County’s effort to decertify the union and undermine its organized capabilities to resist change was successful. However, the district’s experience also demonstrated the challenge of effecting and communicating the transition to its professional employees. As in many other districts, over time the union accrued a recognized role as middleman in teacher induction, professional development, evaluation, compensation, and benefits.

Extra effort was required from the newly non-union human resources office to execute and convey systems that balanced the concerns of teachers with the district’s larger constraints. Further complicating the challenging transition were the district’s simultaneous work to implement a brand new performance-pay system and the union’s active efforts to foster distrust. It may not be possible to build and implement important new employee systems at the same time as directly challenging union power, or to do both effectively without creating a significant turmoil in a number of district schools. Others on the same path should look for ways to learn from Dougco’s experience and enhance a smooth transition.

Jeffco Enters the Fray

The main front in the local reform showdown with teachers union power quickly shifted from Douglas County west and north to Jefferson County in 2013. Union leaders disseminated rumors that Jeffco’s conservative slate of three board candidates intended to replicate Dougco’s reforms, while grossly distorting the information represented. From the moment they were elected, the Jeffco reform team endured a coordinated attack from established interest groups. Their clumsily executed hiring of an attorney to represent the board, while the two liberal board members claimed to be outside the decision loop,

fueled a tale of “secrecy” and wasted taxpayer dollars.⁴³

The CEA and Jefferson County Education Association (JCEA) played a crucial and significant role in the onslaught, which began with the superintendent’s immediate announcement that she would resign the end of the 2013-14 school year. Three months later, unable to work with new board leadership in her accustomed manner, she tearfully announced her abrupt and immediate resignation to a room full of TV cameras and supportive union activists.⁴⁴ A chain of events put the narrow 3-2 reform majority constantly on the defensive and under intense scrutiny, under which their inevitable missteps did not go unnoticed.

The antagonism generated eventually led to a successful 2015 recall election of the school board’s three conservative reformers. Analysts widely believe that an ill-advised, poorly worded September 2014 proposal to review the AP U.S. History framework hardened public opinion against the Board and set in motion their ultimate removal from office. JCEA’s use of sickouts to close down schools and send a message was rescued by the controversy. Intense media attention quickly forged a disingenuous narrative of oppressed students battling school board “censorship.”⁴⁵ For a couple days it was less than clear whether students were protesting the generous teacher performance-pay package that was decided upon outside the traditional collective bargaining context, or the overheated curriculum issue.

Though it wasn’t immediately apparent, the scale of subsequent activity proved to be the precursor of the board’s downfall. Though a misapprehension, the reform board’s popular image had been cemented as disrespectful and domineering right-wing kooks. Ending months of suspenseful waiting, the recall campaign against John Newkirk, Julie Williams, and Ken Witt launched in the summer of 2015. Angry parents emerged as the public face of what was, in actuality, a union-driven effort. Thousands of recall petition signatures were collected in a short burst of energy, before \$120,000 was spent on professional services to procure a total number of signatures far in excess of what was needed.⁴⁶

Tumult in Thompson

As Jeffco's battle raged, Thompson School District, a relatively small district approximately an hour north of Denver in Loveland, Colorado, became the site of a union-led experiment on how to use the courts to force locally elected school boards to accept union contracts with which they disagree.

Like Jefferson County and other reform districts, Thompson has historically not been a hotbed of education reform initiatives. A conservative reform majority took power in 2013, at which point the dynamics of the board began to shift.

The months that followed the election of the four-member conservative reform majority were characterized in large part by conflict with the board's three establishment-minded members. The two board factions clashed over procedural considerations, the need for a school board attorney, financial considerations surrounding the building of a new school and providing equal funding to students in the district's two charter schools, and a variety of other issues. In many cases, forceful personalities on both sides led to heated exchanges on the dais.

In early 2015, the district entered into annual negotiations with its local teachers union, the Thompson Education Association (TEA). When negotiations began, the district had operated under a collective bargaining agreement, known as the Memorandum of Understanding (MOU) in Thompson, for 37 years. Little in the way of collective bargaining reform had ever occurred in the district until 2015.

The 2015 negotiations saw the conservative board majority pushing for major changes to the contract. These changes included the creation of a pay-for-performance pilot program, the elimination of privileged union access to district communications systems and facilities, the removal of many articles of the MOU to a district-controlled employee handbook, and the removal of TEA's exclusive right to represent teachers during the grievance process. Taxpayer-subsidized union leave time, retirement and insurance cost sharing, and dues deduction were also raised as issues during the negotiations.

Two tentative agreements were brought back to the board. The first was rejected on a 3-3 vote (with one member absent) for failing to adequately address the board's concerns, and for adding problematic language concerning transparency in future negotiations.⁴⁷ The second, which resulted from additional negotiation past the contractual ending point of the bargaining process, was also rejected by the board on a 4-3 vote for failing to address key issues in an acceptable fashion.⁴⁸

These contentious negotiations led to TEA filing two separate grievances with the district, which eventually resulted in non-binding arbitration between the district and the union. When the board voted down the resulting unfavorable arbitration decision, which it found to be riddled with errors and contrary to the constitutional principle of local control in education, TEA—with legal help from the Colorado Education Association—sued the district for breach of contract.⁴⁹ The union also requested a preliminary injunction forcing the district to abide by the terms of a contract while the lawsuit proceeded despite multiple board votes against continuing under a collective bargaining agreement.

On September 2, 2015, 8th Judicial District Judge Julie Kunce Field granted an injunction forcing the school district to abide by the terms of the expired 2014-15 MOU while the lawsuit proceeded.⁵⁰ The board voted to appeal this ruling after receiving a \$150,000 grant from the Daniels Fund to help cover costs associated with the legal defense. Rhetoric in Thompson immediately shifted upon receipt of the Daniels grant. While the union and its supporters had previously focused heavily on accusations of squandering public money on the legal defense effort, the Daniels grant quickly spurred a shift toward an "outside money" narrative. This narrative persisted through the 2015 school board elections.

However, the Daniels grant proved wise. A panel of judges from the Colorado Court of Appeals overturned the injunction with an initial opinion on October 22, 2015.⁵¹ That opinion stated the district would suffer irreparable injury because the injunction interfered with the elected board's ability to exercise its constitutional authority to govern the affairs of the district.⁵²

Unfortunately, the landslide electoral loss of Thompson's conservative board majority in November 2015 led TEA to request that the appellate panel refrain from issuing a full opinion until the new board members could be sworn in and act on the issue. The panel agreed to do so. Once the new, more compliant board members were sworn in, the board voted 6-1 to accept the second tentative agreement rejected by the previous board majority. The board also voted to drop the appeal related to TEA's breach of contract suit, preventing the Colorado Court of Appeals from issuing a final decision.

While union leaders in Loveland essentially argued that good faith negotiation required adopting their proposals, their counterparts in nearby Greeley delayed signing off on a proposal. Especially striking in union rhetoric was the cognitive dissonance; at the same time union leaders argued in Thompson that the board had to adopt the tentative agreement because they demanded it, their colleagues in Greeley refused to accept the tentative agreement that didn't match their unrealistic hopes for compensation increases. Greeley Public Schools simply lacked the money to meet their demands. The arrival of a new superintendent to contract negotiation sessions quickly caused the two sides to find an agreement.⁵³

What about Teacher Strikes?

Fortunately, teacher strikes are a rarity in Colorado. The last instance occurred in October 1994, when

more than 2,000 Denver educators protested a negotiated offer from the district by walking out of the job for a week of class. They were rewarded with salary increases and three paid in-district training days at the end of the school year.⁵⁴

While full-scale strikes are practically unheard of in the Centennial State, coordinated educator efforts to call in sick and disrupt school activities have taken place on occasion. Besides Jeffco's well-publicized 2014 sickouts, which were quickly pre-empted by student protests, at least three incidents in recent history merit a mention:

- In May 2004, hundreds of teachers in the Boulder Valley School District pulled off a coordinated sickout in protest of a compensation proposal deemed inadequate. On one day near the very end of the school year, 90 percent of Broomfield High School teachers failed to show up.⁵⁵
- Almost exactly four years later, sickouts were reported to have taken place at three Denver schools. The disruption occurred over a bargaining impasse. Academia Ana Maria Sandoval experienced a 100 percent teacher absence that left the principal scrambling to cover classes.⁵⁶
- Boulder Valley experienced another sickout in May 2009, as 342 participating teachers left more than 100 gaps in six schools that could not be filled by substitutes. The Denver Post reported that sickout participation again was especially large at Broomfield High.⁵⁷

Lessons From Union Tactics

Discussed below is a series of identified union tactics, both inside the bargaining room and in the public square, that merit the attention of reformers who wish to survive and succeed in their endeavors. Individual tactics may be witnessed in isolation, but also can be used in concert with another at appropriate times to protect the labor organization's perks and turf. In the past, National Education Association leaders have recommended that its members read Saul Alinsky's *Rules for Radicals*, a classic organizing guide with which reformers also should become familiar.⁵⁸

It is important to remember that individual union strategic decisions are not made in isolation. The local

and state political landscape, internal union politics, reform activities occurring in other districts, and public perceptions about various education issues all play a role. Wise reformers will listen and learn, carefully tapping into a network of likeminded board members or others in a position of support who possess a broader view of the education policy and political landscape.

Negotiation Timelines Matter

The first line of defense against shifting political winds that might weaken or remove the union's monopoly bargaining status lies within the contract itself. The teachers union infrastructure has more collective

experience in contract negotiations than the typical district has at its disposal. This truth shows in the fact that many master agreements have embedded within them one or more internal procedural deadlines. These collective bargaining “land mines” may require topics to be introduced by a certain date for consideration by a subcommittee or the larger negotiating teams. Failure to follow the letter of the contract may feed a “bad faith” bargaining case.

The effect of this union tactic was laid bare in Thompson during the contentious 2015 struggle to renegotiate the union’s annual memorandum of understanding (MOU). As prime examples, most proposed changes to non-compensation contract items had to be presented to a union-stacked Professional Concerns Committee by January 10. Negotiations teams were required to meet by February 15 to review and update protocols for the bargaining process. And all negotiable items needed to be identified by March 1.⁵⁹

During negotiations with the district, the Thompson Education Association (TEA) filed two separate grievances under the MOU’s prescribed grievance process. One of these grievances alleged that despite the fact that board members were clear from the beginning that the entire contract would be open for negotiation, the board raised issues outside of identified “critical questions” for negotiation after the arbitrary March 1 deadline in the MOU.⁶⁰ Timeline-related issues were also central to the union’s arguments both in arbitration and in court.

Notably, the union continued to negotiate on these issues despite the deadline, and later continued negotiating past the contractually defined end date for negotiations. Despite the argument that contractual deadlines are set in stone and must be followed carefully, union negotiators were more than willing to ignore such deadlines when doing so worked in their favor.

The primary lesson for school board members on this point is that the teachers union will exploit negotiation timelines when doing so offers a tactical advantage. Arbitrary deadlines that place restrictions on when issues can be raised for negotiation ignore the organic nature of negotiation processes. Such deadlines

unnecessarily prevent school board members from reacting to changing situations or identifying problems that may not have been immediately apparent when negotiations began.

School board members interested in collective bargaining reform should pay careful attention to contractual negotiation timelines. Contracts should be designed to maximize flexibility for negotiating parties throughout the process by extending or eliminating deadlines by which issues must be raised.

Clear Communication and a Strong Negotiating Team are Critical

A large portion of the Thompson board’s inability to effect meaningful change during district-union negotiations can be attributed to the negotiation process itself. The board’s rejection of both tentative agreements was largely blamed by the district’s human resources director on a lack of clear guidance to the negotiating team from board members. However, the team’s failure to negotiate for true compromises on clearly identified issues also raises the distinct possibility that they were unwilling or unable to effectively negotiate on the issues the board did raise.⁶¹ The lack of alignment between the board and the negotiating team presents a stark contrast to the dynamic that was successful in Dougco in 2012, and to a lesser extent in Jeffco in 2015.

Without laying blame fully at the feet of either the district negotiating team or the board, two lessons can be gleaned from Thompson’s negotiations. First, it is critically important that districts carefully and deliberately select negotiating teams. Members of the team should be willing and able to advocate fully for the board and the district during negotiations. Team leadership should be willing to unequivocally represent the interests of the district as expressed by the board of education, even when doing so necessitates uncomfortable conversations or departures from longstanding language. Chief negotiators in Dougco and Jeffco each were able to advance aggressive cases before the public eye that left union leaders with few defensible positions. Such was not the case in Thompson.

Second, board members should take care to clearly communicate their concerns and perspectives to the negotiating team. This communication should take place in a transparent fashion that aligns with the legal requirements of Proposition 104, a factor that was complicated by the tensions between board majority leaders in Thompson and the negotiators ostensibly executing their plans. Feedback and progress reports from the negotiating team should be solicited often, and used to guide the negotiation process. Based on the prevailing interpretation of Prop 104, then Colorado's brand-new open negotiations law, board members in Thompson struggled to discuss their own bargaining strategy in public.

Life before Prop 104 posed its own challenges, however. In both Douglas County (2012) and Jefferson County (2014), union leaders jumped in front of the respective boards and called for historic open negotiation sessions. But in neither case did the added transparency provide the unions any benefit beyond the initial public relations nod for supporting the practice in the first place.

In Jeffco, limited discussions over compensation and a few select topics in an open setting contrasted with the previous regime's practice of cutting deals for salary freezes and furlough days behind closed doors. Open negotiations came like a breath of fresh air, but blew away nearly as quickly. For the fourth session, in April 2014, JCEA leaders orchestrated a protest that drew hundreds of members with inaccurate talking points about the new board. Then, an awkwardly declared impasse immediately led downstairs from the board room in district headquarters to the parking lot where a stage, microphones, and public address system awaited. JCEA proceeded to tout its message before impasse immediately required negotiations to be held behind closed doors.⁶²

In Dougco, with the full agreement up for consideration, reform-minded negotiators skillfully used the opportunity to press the board's demands to remove union privileged access to taxpayer resources. DCFT responded by mobilizing several hundred uniformed members to parade around outside the negotiation site with protest signs designed to attract media attention. This tactic enabled them to get their message out, requiring the reform team

to have its own focused and thoughtful response prepared, primarily around the nature of the topics being negotiated. Clear distinctions between direct challenges to union power and prerogative on one hand and benefits proposed to individual teachers on the other helped to neutralize the union narrative.

Carefully Navigate Issue Restrictions and "Good Faith" Requirements

Confining negotiation to "critical questions" can prohibit parties from raising specific issues that require attention. The approach can also lead to additional and unnecessary conflict over which issues can or cannot be construed as falling within these critical questions, and can allow the union to argue that some issues are not eligible for negotiation.

Whenever possible, it should be made clear that specific issues with any part of a contract can be raised by participating parties at any point during negotiations. Where interest-based bargaining strategies are employed and "critical questions" must be used, these questions should be clearly and broadly worded so that they inarguably encompass the full scope of possible changes to a contract.

In Thompson, one of the TEA's grievances alleged that the board violated the memorandum of understanding's "good faith" provision by rejecting the first tentative agreement brought back from negotiations.⁶³ This provision, a common component found in many collective bargaining agreements, states that "Both parties agree to negotiate with good will towards the other and within the confines of good faith."⁶⁴ Although Thompson's MOU included a generic online definition of "good faith" negotiation in its non-contractual protocols section, there is no predetermined legal definition of the term.

The inability of one negotiating party to "walk away" from negotiations by rejecting an agreement deprives that party of valuable leverage and places the party at a disadvantage. With this in mind, school board members should be keenly aware of the implications of "good faith" provisions in their districts' collective bargaining agreements.

When these provisions are present, they should be modified in such a way that cannot be construed as a requirement to reach an agreement. They should explicitly recognize that “good faith” negotiation does not guarantee successful ratification of any settlement or tentative agreement, and that both parties are free to fully reject settlements or tentative agreements at any time for any reason. These modified provisions should be included in contractually binding sections of collective bargaining agreements in order to be fully and clearly agreed upon by all parties.

Prepare for Large-Scale Rallies and Pressure Pushes

On the exact same day in September 2012, about 45 miles apart, two organized displays of Colorado teachers union frustration caught the attention of local media. Outside the Douglas County School District headquarters in Castle Rock, several dozen teachers and political allies protested the Board of Education’s pending vote not to renew the district’s 40-year-old collective bargaining agreement. Though the bargaining union was Colorado’s major local affiliate of the AFT, CEA president Kerrie Dallman blasted her network with a call to join the Wednesday afternoon protest in “solidarity” against the loss of union power. It is unclear how many of the Castle Rock protesters came from outside Douglas County.⁶⁵

While Dallman promoted a “call for action” to attend the Douglas County protest, she instead made a personal appearance at an even noisier demonstration at another school board meeting in Thornton. The Adams 12 Board of Education followed through on a difficult decision to balance the budget by asking all employees to pay an extra 1.5 percent into their pension fund. Only the CEA-affiliated District Twelve Educators Association (DTEA) fought the move. Nearly 400 teachers from seven different school districts packed inside and outside the board room, many dressed in black and holding homemade signs, and a few wearing or displaying the militant imagery of the red fist. Five minutes of orchestrated rhythmic clapping eventually quieted down as the meeting got underway. The crowd offered encouragement as a number of union officials and teachers rose to address the school board.

When the second of two parents defended the Adams 12 board during public comment, the CEA president came to the front of the room and directed the pro-union crowd to walk out in silent protest. Any chance to have a meaningful dialogue was undercut by the walkout, since they didn’t wait around to hear a response from the board. The two parents who had testified were escorted out to their cars by the district security chief, who reportedly said “all those people that had cleared out were outside the front doors waiting for [them].”⁶⁶

The dual threat demonstrated the union’s ability to muster manpower from across district lines during high-stakes reform showdowns. A vocal minority of teachers can be activated to resist change. In September 2012, both the Castle Rock and Thornton protests proved effective in eliciting some neutral to sympathetic media coverage. One TV news report uncritically repeated that the Douglas County rally was promoted by teachers, not the union. Another TV network’s coverage of its Adams 12 counterpart disclosed that teachers came from across district lines. Exposing the role of the CEA president was the work of the Independence Institute and alternative media. Reform board members typically need to stay above the fray, but have trusted allies to point out the obvious connections.

Both the Douglas County and Adams 12 school boards successfully followed through in enacting sustainable changes that promoted student-centered fiscal responsibility over union prerogative. In the case of Adams 12, though, the union found a way to strike back directly at the core strength of the reform board’s argument. Union leaders worked with a former district budget office employee to weave a tale of wildly irresponsible accounting and financial management.

Together, they recruited a willing local TV news reporter from Fox31, Josh Bernstein, to produce a sensational series attacking the board and superintendent. The attack was made despite an independent audit conducted by the well-respected former school finance director from the Colorado Department of Education. A conservative media counter-narrative helped blunt the effects of the attack, and the employee’s legal case was rejected by

multiple courts. Bernstein left Fox31 to take a job at al-Jazeera America.⁶⁷

Union Leaders Can Refrain from Being the Opposition's Face

Because of the Tobacco Institute effect identified earlier, state and national union leaders have become increasingly careful about leaving off “outside-the-district” fingerprints that neutralize their own standard talking points. Nonetheless, they are not always successful. Seeking to undermine the Thompson reform board’s efforts to draft a new scaled-back master agreement, CEA contracted with an outside group to create an online petition and then had it sold as a grassroots initiative. Some investigation uncovered the connection, as well as the fact that the petition company works exclusively with left-leaning, progressive organizations.

Teachers union officials had greater success disguising their involvement in Jefferson County during the 2015 recall campaign. As board foes intensified the opposition, they simultaneously worked to obscure the union’s role. Previous Complete Colorado reports had documented the Jefferson County Education Association (JCEA) president’s recorded remarks riling up the troops against the “bast_____” on the school board, as well as the union’s role to “support but not organize” the 2014 sickouts.⁶⁸

The intensity of the AP U.S. History controversy led board reformers to err with a public response that included identifying certain students as union “pawns.” True or not, setting up a dynamic that elevates students as a reform board’s primary opposition virtually guarantees a no-win situation in the public eye. Jeffco board leaders’ rhetorical mistake dragged them into an unwinnable series of publicized confrontations, encouraged by union and PTA supporters. It also ultimately poured more fuel on the 2015 recall effort, even after the school board updated the district’s curriculum review policy to be more inclusive, transparent, and accountable, and the College Board’s revisions to the AP U.S. History framework largely vindicated the original concern.⁶⁹

The summer before the AP U.S. History controversy exploded into the media spotlight, CEA president Dallman addressed delegates at the National

Education Association assembly in Denver. She declared her own district Jeffco, as well as Adams 12 and Thompson, to be sites of conflict with “hostile” school boards.⁷⁰ Shortly thereafter, 48 NEA political operatives from 18 states descended on Jeffco. According to published and off-the-record accounts, they visited teachers at their homes for two primary purposes: 1) to persuade them to preemptively end their payroll dues deduction and pay union membership through a private electronic transfer; and 2) to test a three-part message about secrecy, waste, and disrespect that would be heavily used against the board.

A slight variation of the message ended up on the ballot as the primary pro-recall argument. Still, the anti-reform coalition worked hard to keep the union away from the face of the election. Only after the successful recall of Jefferson County’s conservative reform majority did the full extent of the union’s involvement become clear.

Shortly after the recall, a document from the JCEA came to light that acknowledged responsibility for a two-year plan designed to bring down the reform board. According to the document, “From the moment the polls closed in 2013, JCEA leaders and staff have been focused the plan that delivered tonight’s win.”⁷¹ The document also specifically cited relationships with politically aligned parents and community members to gather information about board activities, the focused development of an anti-board message that resonated with the recall campaign, and effectively encouraging member participation in the “Boots on the Boulevard” protests and door-to-door voter outreach.

Then, in December 2015, a federally required National Education Association LM-2 filing revealed a very large donation to Jeffco United, a 501(c)(4) organization that operated along with its subsidiaries as the primary pro-recall organization.⁷² Organizations falling under the 501(c)(4) classification are not required to disclose their donors. The organization’s 501(c)(4) status was challenged by a watchdog group called Colorado Government Watch, and an administrative judge ruled that because the organization was created with the sole purpose of supporting the recall effort, it should have filed as an

issue committee under Colorado law. As part of the ruling, Jeffco United was ordered to file as an issue committee and to disclose its donors.⁷³

After the revelation of NEA's contribution, Jeffco United's legal team abandoned any hope for an appeal of the decision. The organization disclosed its donors to the Colorado Secretary of State on Christmas Eve—a date famous for being an excellent time to release unfavorable news to a public largely distracted with holiday festivities. The disclosures revealed that \$283,500—more than 99 percent of the organization's money—was contributed by the National Education Association, the Colorado Education Association, and the Jefferson County Association.⁷⁴

Unfortunately for Jeffco United, the strategy of releasing this damning information on Christmas Eve did not prevent the story from making both state and national news after the media learned that denials of union involvement in the supposedly “parent-led” recall effort were outright fabrications.⁷⁵

Though these revelations could have served to vindicate the reform cause, they arrived too late to accomplish any good. Even so, they are instructive. When backed into a corner, unions and their supporters are not above blatant lies—and they are very good at developing and utilizing effective, sticky narratives to support these lies. Reformers must be prepared to investigate, expose, and build counter narratives if they are to prevail in the face of such dishonesty.

Union Allies Fire Up the Base with Social Media: Jeffco and #StandUp4Kids

In Colorado, the teachers union's reform resistance largely has proven less than effective at appropriating social media tools to advance its message, at least when focused on policy. Even in areas where the teachers union polls reasonably popular, such as Jeffco, organized labor leaders fastidiously avoided any official appearance as the face of online personal antagonism. JCEA posted pro-labor memes, pictures of members celebrating Blue Thursdays, and information on rallies and activities. But the work of the vitriolic Twitter echo chamber was left to other characters, including anonymous satire accounts that frequently wandered

from the humorous into the territory of personal nastiness.

It should be noted that the type of behavior displayed by Jeffco reform opponents under the **#standup4kids** hashtag is not something union leaders in most cases can turn on or off like a light switch. The social media milieu serves not so much as a means of persuading the middle as empowering, motivating, and encouraging the base. The anti-reform pro-recall cause ultimately was successful in its ability to establish the narrative about the board majority and in its organic outreach efforts, but the work on Twitter and Facebook acted as fuel to kindle the fire.

CEA Isn't Afraid to Play the Lawsuit Game

When all else fails, try the courts. The union's level of available resources enables them to readily take their game to the judicial realm through lawsuits. CEA supported the ill-fated legal effort in Valley RE-1 in 2011. Its largest local affiliate, JCEA, put it to more effective use in early 2015. They sued and won compromise from the Jeffco school board in a dispute over what was seen as a unilateral board action to implement new teacher pay scales and policies.⁷⁶

Later, as discussed above, CEA attorneys helped the Thompson Education Association win a district court injunction to preserve the prior year's collective bargaining agreement, even though the Board effectively had voted it down three separate times. Though they lost an initial round with the Court of Appeals, the heavily funded union team won at the ballot box, making it just a matter of time before the newly instated board would drop its opposition.

Political scientist Terry Moe identified this dynamic years ago, in a different context that still applies here: “The bottom line is that the teacher unions' greatest power is not the ability to get what they want, but rather the ability to stifle reforms that threaten their interests.”⁷⁷ The heavy-handed skill of blocking described by Moe extends to the use of the judiciary to stall, or even upend, local reform boards' ability to reform union policies or alter the collective bargaining relationship. The state's teachers unions—and the CEA more than its AFT counterparts—have shown

they will fight desperately and creatively to protect monopoly bargaining status.

Blurring the Electoral Lines: An Emerging Strategy

Two separate instances within back-to-back election cycles raise concerns about concerted union efforts to bend the spirit of election law to their advantage. In 2013, after ballots had been mailed and days before the election officially ended, a parent activist discovered that union-backed Adams 12 school board candidate Amy Speers lived outside the legal director district boundary. The Colorado Secretary of State sought to intervene on election day, insisting that votes should not count for Speers as an ineligible candidate. The judge denied the request, and it was learned that Speers had won more votes than appointed reform incumbent Rico Figueroa. A group of local citizens responded with a formal legal complaint that ultimately was rejected by the Colorado Supreme Court. Figueroa's seat was declared vacant, and a new member was appointed by the school board president.⁷⁸

Two years later, history nearly repeated itself. Outgoing Mesa 51 school board member Ann Tisue learned that Paul Pitton, the union-supported

candidate for her seat, lived in the wrong director district. The candidate had relied on outdated maps, and district officials sat silent when the error was discovered. Attempting to follow the precedent from the Figueroa case, a group of local Mesa County plaintiffs filed a legal complaint before the votes were counted. Pitton publicly promised to move into the correct district right away. One day before the election, a district court judge offered "no opinion" on the candidate's eligibility but ruled that there was nothing he could do to alter the process.⁷⁹ Pitton won the most votes and was seated as the newest member of the Mesa 51 Board of Education.

The Colorado Supreme Court shortly thereafter agreed to hear an appeal in the case. If the original ruling stands, the only way to halt an ineligible candidate from winning an election may be to file an objection during the statutory five-day challenge period. This approach would require reformers to systematically check election filings across numerous districts in order to avoid further repeats that opponents could capitalize on as an election law loophole to defend status quo local union power.

Conclusion: Choosing the Right Message and Approach

While broadly speaking, reform policies and the reform message are popular, the process of advancing and implementing those reforms matters greatly. Challenges to union power at the local level carry with them the unique calculus created by an interesting dichotomy. People tend to complain about the quality of public education and the need for improvement on a larger scale, while also giving higher marks to the performance of their local schools.⁸⁰ With the possible exception of some of the most dismally performing urban education centers, parents of schoolchildren especially hold their local schools and teachers in high esteem, even in spite of clear objective measures.

No family wants to receive the message that the school they have chosen for their child is inferior or unworthy. And the teachers with whom they interact represent a

powerfully persuasive voice for many parents. Reform-minded board members who feed into union leaders' message of fear, and through their actions create an authoritarian appearance of disrespect, will have lost the messaging war.

Enacting popular policies that prioritize student learning and accountability over union power, whether through collective bargaining negotiations or other means, guarantees neither sustained success nor political acclaim. To the contrary, the friction generated by such reform initiatives often has the effect of reducing board member popularity, possibly to the detriment of the reform program being enacted.

Three key themes need to be understood to overcome the threat of having efforts handicapped:

- Reformers need to frame their efforts in terms of fighting for students and parents, not strictly as fighting against union power. Stand for people, not against things.
- To the greatest extent possible, reformers need to honor inclusive processes to advance their agenda. Rather than simply push the union out, more friendly voices need to be found and brought to the task forces and committees that will furnish the foundation for sustainable local reform.
- Reformers need to be disciplined in their communication and attuned to union strategies that would undermine their efforts. While board members need to be aware of the opposition playbook, it should be left to other allies to publicly expose them and attack, if needed.

Local education reform that seriously confronts union power in the interest of improving outcomes for kids and families is far from an easy task. Those brave enough to accept the challenge should not tread into the contest lightly or blindly, especially given the lessons available from their forbears. It is our hope that the next generation of conservative school board reform leaders will learn the lessons well and take up the fight for families and students in need of a great education a step higher.

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